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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,385	07/27/2001	Karl-Heinz Schwonke	D078 1130.1	7824

7590 07/15/2004

Womble Carlyle Sandridge & Rice, PLLC
P.O. Box 7037
Atlanta, GA 30357-0037

EXAMINER

AHMED, SHEEBA

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/916,385

Applicant(s)

SCHWONKE ET AL.

Examiner

Sheeba Ahmed

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exo

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-31 and 37-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-31 and 37-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Claims 19-31 and 37 have been amended in the above-identified application. Specifically, claims 19-31 have been amended to recite a planar structure comprising a linoleum sheet comprising flakes over the whole cross-section of the linoleum base composition. **Claims 19-31 and 37-58 are now pending.**

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 19-31 and 37-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Dobry et al. (US 2,962,081).

Dobry et al. disclose plastic composition sheets that are adapted for use as floor coverings wherein the process of making such a plastic composition sheet entails depositing uniformly on a backing material a smooth layer of a mixture of fine particles and flat plastic chips (Column 1, lines 49-65). The plastic chips are about 0.18 to 1.0 inches in diameter (equivalent to 4.57 to 25.40 mm) and have a thickness of 0.01 to 0.025 inches (equivalent to 254-635 microns) (Column 2, lines 37-45). The process of the disclosed invention is applicable to various types of plastic compositions used in surface coverings including linoleum (Column 2, lines 71-72). If the plastic composition

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is linoleum then the linoleum is composed of drying oils, resin, fillers and pigments. The oil can be linseed oil. The resin can be rosin or ester gum. The thickness of the plastic layer can be varied and is typically 0.02 to 0.06 inches in thickness (Column 6, lines 11-31, 70-75). Typical of other suitable resins are polymethyl methacrylates (Column 5, lines 27-30). Figure 2 is a cross-sectional view of the surface covering and specifically shows that the plastic chips (10) are imbedded in the matrix of fine granules (11) and wherein a backing material (20) is also present. Claims 21 and 42 recite that the polymeric material may be selected from the recited Markush groups and Dobry et al. meet the limitation that the polymeric material may be a polymethyl methacrylate. Claims 22-27 and 43-53 are dependent on claims 21 and 42, respectively, and do not positively recite that the polymeric material is a reaction product of a carboxylic acid and an epoxidation product of a carboxylic acid ester and hence claims 22-27 and 43-53 are rejected under Dobry et al. All limitations of claims 19-31 and 37-58 are disclosed in the above-recited reference.

Response to Arguments

3. Applicant's arguments filed on March 26, 2004 have been fully considered but are not persuasive. Applicants traverse the rejection of claims 19-31 and 37-58 under 35 U.S.C. 102(b) as being anticipated by Dobry et al. (US 2,962,081) and submit that Dobry et al. fail to teach or suggest a planar structure comprising a linoleum sheet containing flakes over its whole cross-section given that the product taught by Dobry et al. is formed by a stencil process in which the bulk flake material is spread through a

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stencil and then compressed to give a distribution of chips only on the surface stratum of the floor covering. However, the Examiner disagrees. Dobry et al. disclose plastic composition sheets that are adapted for use as floor coverings and comprise a backing material and a smooth layer of a mixture of fine particles and flat plastic chips (Column 1, lines 49-65). The plastic chips are about 0.18 to 1.0 inches in diameter (equivalent to 4.57 to 25.40 mm) and have a thickness of 0.01 to 0.025 inches (equivalent to 254-635 microns) (Column 2, lines 37-45). The thickness of the plastic layer, which is linoleum, can be varied and is typically 0.02 to 0.06 inches in thickness (Column 6, lines 11-31, 70-75). Furthermore, Figure 2 is a cross-sectional view of the surface covering and specifically shows that the plastic chips (10) are imbedded in the matrix of fine granules (11) and hence are present over the whole cross section of the plastic composition.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheeba Ahmed whose telephone number is (571)272-1504. The examiner can normally be reached on Monday-Friday from 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau can be reached on (571)272-1516. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Sheeba Ahmed
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July 9, 2004